

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION

UNITED STATES OF AMERICA

v.

CASE NO.: 2:10-cr-37-FtM-38NPM

DAVID SMOKES

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**ORDER**<sup>1</sup>

Before the Court is Defendant David Smokes' Motion to Reduce Sentence Under the First Step Act of 2018 ([Doc. 60](#)), the Government's response in opposition ([Doc. 61](#)), and the United States Probation Office's memorandum on Smokes' eligibility for a reduction ([Doc. 58](#)).

On July 8, 2010, Smokes pled guilty to four counts of possessing with intent to distribute crack cocaine in violation of [21 U.S.C. § 841\(b\)\(1\)](#). ([Doc. 58 at 12](#)). All four counts involved 7.8 grams of crack cocaine. The Court then sentenced him to 120 months of imprisonment followed by four years of supervised release. ([Doc. 37](#)). In fashioning the sentence, the Court considered the Fair Sentencing Act of 2010 and "how it would have affected [Smokes'] Career Criminal guidelines had his offense occurred after the Act was imposed." ([Doc. 58 at 8](#)). Smokes now moves the Court to exercise its discretion under Section 404 of the First Step Act to reduce his sentence to time served and term of supervised release to three years. See First Step Act of 2018, Pub. Law 115-391

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(S.756), 132 Stat. 5194 (enacted Dec. 21, 2018) (making retroactive the Fair Sentencing Act's reduction in the disparity between crack and powder cocaine sentences to defendants whose offense before Congress passed the Act).

Here, Smokes' request to reduce his term of imprisonment is moot because he was released from custody on October 25, 2019. The Court thus need only decide whether to reduce Smokes' term of supervised release to three years, which the Government does not oppose. ([Doc. 61 at 7](#)). Based on the Court's review of the record and applicable law, it will exercise its discretion to reduce the supervised release term as requested.

Accordingly, it is now

**ORDERED:**

Defendant David Smokes' Motion to Reduce Sentence Under the First Step Act of 2018 ([Doc. 60](#)) is **GRANTED in part** and **DENIED in part as moot**. The motion is granted to the extent the Court reduces Smokes' term of supervised release to three years, but it is denied as moot in all other respects.

**DONE AND ORDERED** in Fort Myers, Florida on this 7th day of November 2019.

  
SHERI POLSTER CHAPPELL  
UNITED STATES DISTRICT JUDGE

Copies: Counsel of Record